

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

TotalEnergies Gas & Power North America, Inc.;
Aaron Hall; and Therese Tran,
Plaintiffs,

v.

Federal Energy Regulatory Commission; Chairman
Richard Glick; Commissioner James Danly;
Commissioner Allison Clements; Commissioner Mark
C. Christie; Commissioner Willie L. Phillips;
and Acting Chief Administrative Law Judge
Andrew Satten, in their official capacities,
Defendants.

No. 4:22-cv-4318

Hon. Lynn N. Hughes

**STIPULATED SCHEDULE FOR BRIEFING AND
JOINT MOTION FOR EXPEDITED CONSIDERATION
OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

Pursuant to Section 5(C) of Your Honor's Procedures and Local Rule 7.1, Plaintiffs TotalEnergies Gas & Power North America, Inc., et al., and Defendants Federal Energy Regulatory Commission (FERC), et al., respectfully stipulate to the schedule set forth below for the parties' briefing on Plaintiffs' Motion for a Preliminary Injunction, which was filed on December 16, 2022 (D.E. 23), and the parties further jointly move for expedited consideration of that Motion. In support of the requested relief, the parties respectfully state as follows:

1. On December 13, 2022, Plaintiffs commenced this action against Defendants, challenging an administrative enforcement proceeding pending before FERC that the agency initiated against Plaintiffs, captioned *Total Gas & Power*

North America, Inc., No. IN12-17-000 (FERC). D.E. 1. Service of the complaint on all defendants was completed as of December 20, 2022. D.E. 24, at 1-2. In the underlying FERC proceeding, FERC alleges that Plaintiffs violated the Natural Gas Act, 15 U.S.C. § 717 *et seq.*, and FERC regulations thereunder. Plaintiffs' complaint alleges that the FERC proceeding violates multiple provisions of the Constitution and various federal statutes. D.E. 1, at 2-5 (¶¶ 1-6), 53-132 (¶¶ 102-258).

2. On December 16, 2022, Plaintiffs filed the Motion for a Preliminary Injunction, which seeks to enjoin Defendants from further conducting the FERC proceeding pending resolution of this suit. Plaintiffs' Motion is premised on their claims that, under the Fifth Circuit's decision in *Jarkesy v. SEC*, 34 F.4th 446 (5th Cir.), reh'g denied, 51 F.4th 644 (5th Cir. 2022), and Supreme Court precedent, the FERC proceeding violates the Constitution on the grounds that Article III and the Seventh Amendment forbid assigning adjudication of the matter to an administrative agency; that assignment of the case to a FERC administrative law judge (ALJ) violates Article II; and that, if the applicable statutes authorize FERC to bring enforcement actions within the agency, then the statute violates the nondelegation doctrine of Article I. D.E. 23, at 8-21. Defendants have stated that they intend to oppose Plaintiffs' Motion. *Id.* at 3 n.*.

3. When Plaintiffs filed their Motion for a Preliminary Injunction on December 16, a hearing in the FERC proceeding before a FERC ALJ was scheduled to begin on January 23, 2023. D.E. 23, at 1, 6. On December 21, 2022, FERC issued an order (attached hereto as Exhibit A) noting the filing of Plaintiffs' Motion for a Preliminary Injunction in this Court and stating that, "[i]n order to allow for briefing and a decision on that motion, the proceeding in Docket No. IN12-17-000, shall be

placed in abeyance for 90 days, and the [ALJ] hearing now scheduled to begin on January 23, 2023, shall commence no earlier than April 24, 2023.” Ex. A, at 2.

4. The parties agree that it would be in the interest of all concerned for Plaintiffs’ Motion for a Preliminary Injunction to be fully resolved—including the completion of potential appellate review in the Fifth Circuit—before any ALJ hearing in the FERC proceeding begins. Under FERC’s December 21 order placing that proceeding into abeyance for 90 days, an ALJ hearing could be scheduled to begin before the end of April 2023. See Ex. A, at 2 (providing that an ALJ hearing “shall commence no earlier than April 24, 2023”); Ex. B, at 1 (order of presiding ALJ).

5. To that end, pursuant to Section 5(C) of your Honor’s procedures, the parties have stipulated to the following briefing schedule:

- Defendants will have an additional 31 days beyond the time allotted under Local Rules 7.3 and 7.4(A) to file their Response to Plaintiffs’ Motion for a Preliminary Injunction, *i.e.*, until **February 6, 2023**.
- Plaintiffs will file their Reply within the seven-day period allotted under Local Rule 7.4(E), *i.e.*, on or before **February 13, 2023**.
- If this Court wishes to hear oral argument on the Motion, counsel for all parties would be prepared to appear at the Court’s convenience.

6. The parties further respectfully jointly move that the Court consider and rule upon Plaintiffs’ Motion for a Preliminary Injunction on an expedited basis. Specifically, the parties respectfully request that, to the extent possible, the Court rule on that Motion on or before **March 6, 2023**. A ruling by that date would provide an opportunity for either party to seek expedited appellate review in the Fifth Circuit, and for the Fifth Circuit to decide such an appeal, before any ALJ hearing begins.

CONCLUSION

For the foregoing reasons, the parties stipulate to the briefing schedule set forth above and respectfully jointly move that the Court consider and rule upon Plaintiffs' Motion for a Preliminary Injunction on an expedited basis.

Dated: December 23, 2022

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December 2022, I caused the foregoing document to be filed electronically through the Court's CM/ECF system, causing it to be served on all counsel of record.

/s/ William S. Scherman
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